

1 BEFORE THE STATE BOARD OF TAX APPEALS
2 STATE OF ARIZONA
3 101 North First Avenue - Suite 2340
4 Phoenix, Arizona 85003
5 602.528.3966

6 JAMES CULLEN dba NILES RADIO,
7 Appellant,

8 vs.

9 ARIZONA DEPARTMENT OF REVENUE,
10 Appellee.

)
) Docket No. 1846-00-S
)

) NOTICE OF DECISION:
) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW
) AMENDED
)
)
)

11 The State Board of Tax Appeals, having considered all evidence and arguments presented, and
12 having taken the matter under advisement, finds and concludes as follows:

13 FINDINGS OF FACT

14 James Cullen dba Niles Radio ("Appellant") has been in the business of selling and leasing 2-way
15 radios, pagers and wireless phones since 1987. Appellant also provides 2-way radio and pager service
16 for a monthly fee.

17 The Arizona Department of Revenue (the "Department") audited Appellant for the period May
18 1989 through December 1992 ("Audit Period") and issued a deficiency assessment in June 1993. The
19 Department determined that Appellant properly reported transaction privilege tax under the retail and
20 rental classifications but failed to report and pay tax under the telecommunications classification during
21 the Audit Period.¹ Accordingly, the Department assessed Appellant additional tax, plus interest and
22 penalties for late filing, late payment and negligence. Appellant protested the assessment on July 23,
23 1993, arguing that he is entitled to a deduction for bad debts that he did not take into account when filing
24 his returns during the Audit Period.²

25 ¹ The assessment included tax assessed on the access fee charged to customers by Appellant. Appellant had
claimed that \$15 of the \$35 access fee was attributable to nontaxable maintenance fees but conceded this argument
at the hearing before the Board.

² Appellant claims that he is also entitled to a deduction for bad debts for tax years 1993 to 1996; however, these
years are not before the Board.

1 The parties held an informal conference on November 23, 1993. A second informal conference
2 was held on December 22, 1998. Appellant then requested a formal hearing. The Office of
3 Administrative Hearings ("OAH") scheduled a hearing for October 1999. Appellant requested a ninety-
4 day extension. The hearing was held on January 5, 2000. Appellant failed to appear and the OAH
5 upheld the assessment.

6 Appellant protested the OAH decision to the Director of the Department, claiming he never
7 received notice of the continued hearing. The Director abated all penalties and abated interest for the
8 periods February 1, 1994 through July 1, 1997 and February 1, 1998 through December 1, 1998 due to
9 unreasonable delay by the Department. The Director upheld the remainder of the assessment.

10 DISCUSSION

11 The primary issue before the Board is whether Appellant is entitled to a deduction for bad debts
12 during the Audit Period. Appellant bears the burden of proof as to all issues of fact. A.A.C. R16-3-118.

13 Rule R15-5-2011 of the Arizona Administrative Code, provides that in order to obtain a deduction
14 for bad debts, the gross receipts from the transaction on which the bad debt deduction has been taken
15 must be identified and reported as taxable. The Department argues that records previously provided by
16 Appellant did not show that the transactions were properly identified and reported. Appellant may have
17 been confused about what records it needed to provide to the Department in order to comply with the
18 statutory requirements. However, the Board finds that documentation submitted for its review satisfies
19 the statute, is internally consistent and supports the deduction claimed.³ Therefore, Appellant is entitled
20 to the deduction.⁴

21 A.R.S. § 42-2065 provides that the Director of the Department may, at the Director's discretion,
22 abate all or part of an assessment if additional interest has accrued due to any unreasonable error or
23 delay by the Department. The Director has abated a portion of the interest assessed due to delays by the
24 Department. Appellant has not shown that the Director has abused his discretion in not abating the
25 remainder of the interest. Thus, Appellant is liable for the remaining interest.

³ Board member, Stephen P. Linzer, recused himself from this case and did not participate in either the hearing or this decision.

⁴ Although Appellant previously claimed a larger deduction, the amount of tax Appellant now claims to have incurred on bad debts and the amount that the Board finds Appellant is entitled to deduct from his tax liability is \$3,721.42.

1 Finally, Appellant seeks reimbursement for the fees related to this appeal. A.R.S. § 42-2064
2 provides that "A taxpayer who is a prevailing party may be reimbursed for reasonable fees and other
3 costs related to an administrative proceeding that is brought by or against the department in connection
4 with an assessment, determination, collection or refund" The statutory procedure requires that the
5 taxpayer commence a request for reimbursement at the Department by presenting "an itemization of the
6 reasonable fees and other costs to the taxpayer problem resolution officer within thirty days after the
7 conclusion of the administrative proceedings." A.R.S. § 42-2064.C. The Department will then rule on the
8 reimbursement request. A taxpayer may then appeal the ruling to this Board. Appellant has not yet
9 submitted an itemization to the Department's taxpayer problem resolution officer. Accordingly,
Appellant's request for reimbursement is premature.

10 CONCLUSIONS OF LAW

- 11 1. Appellant is entitled to the claimed deduction for the Audit Period. A.A.C. R15-5-2011.
12 2. The remaining interest may not be abated. A.R.S. § 42-2065.
13 3. Appellant is not currently entitled to reimbursement of its administrative costs. A.R.S.
§ 42-2064.C

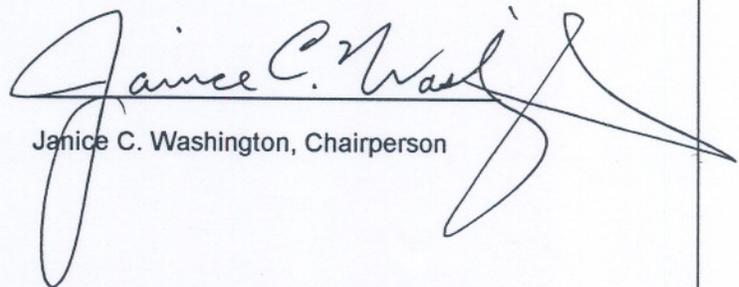
14 ORDER

15 THEREFORE, IT IS HEREBY ORDERED that the appeal is granted in part and denied in part,
16 and the final order of the Department is modified.

17 This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer,
18 unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

19 DATED this 2nd day of October, 2001.

20 STATE BOARD OF TAX APPEALS

21 
22 Janice C. Washington, Chairperson

23 JCW:ALW

24 CERTIFIED

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mailed or delivered to:

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